



ORRICK, HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-2669

tel +1 415-773-5800
fax +1 415-773-5759
WWW.ORRICK.COM

Annette L. Hurst
(415) 773-4585
ahurst@orrick.com

November 2, 2015

Honorable William H. Alsup
United States District Judge
United States District Court for the
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Oracle America, Inc. v. Google Inc.*, Case No. 10-cv-03561
Letter Motion to Compel Financial Information (per ECF Nos. 1227 ¶11 & 56)

Dear Judge Alsup:

Google has not produced its financial information, and its failure to do so is hampering Oracle's ability to prepare its case for trial. Oracle requests that the Court (1) compel Google's immediate identification and production of its financial documents as described herein, and (2) enter the revised deadlines stipulated by the parties in ECF No. 1334.

On August 21, 2015, Oracle served Interrogatory No. 31 comprehensively requesting sales and financial performance information for Android-related products and services for the time period since the first trial. Interrogatory No. 31 requested "For each year from 2010 to the present and separately for each month, detail the actual and projected unit sales, revenues, gross profits, and operating profits directly or indirectly derived from or related to Android, including without limitation sales of Android devices; application developers' registration fees; application transaction fees; Android Market, Android Checkout or Google Play application downloads or other transactions; any fees paid to and payments made to Google by Android partners, including members of the Open Handset Alliance; sales of any other product or service sold, licensed, downloaded or otherwise offered in connection with Android; in-app billing on Android devices; advertising on or through Android devices; sales, revenues, and profits derived from any other product or service sold, licensed, downloaded, or otherwise offered in connection with Android or software based on or derived from Android; and any other sales, revenues, and profits derived as a result of Google's release of Android."

Google refused to answer the interrogatory with substantive information in reliance upon a Rule 33(d) election to produce documents instead. Since that time, Oracle has repeatedly met and conferred to request the documents sufficient to provide the requested information, and Google has failed to identify exactly which documents it will produce and when. Finally, on October 31, Google indicated that it would begin production of unspecified financial documents this week and complete it by some unspecified date in "early November." Google made no assurance that the forthcoming documents will supply the requested information. Oracle is further concerned whether Google will produce all relevant documents concerning all of its prior lines of business given its recent



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reorganization into multiple operating companies under the holding entity "Alphabet." As of November 2, Oracle thus has no understanding exactly what financial information it will receive, no date certain for production, and it faces looming deadlines for completion of fact discovery and disclosure of expert reports.

Google's failure to answer the interrogatory or produce its financial documents puts Oracle in a very difficult position vis-à-vis the Court's October 26, 2015 Order, ECF No. 1349, and an untenable position in relation to the December 8, 2015 date for disclosure of expert reports, including initial reports on damages. Oracle currently intends to respond as ordered by the Court on November 9 using only publicly available data and estimates as to Google's business during various periods of time, but it does not ultimately expect that it will rely exclusively upon such data at trial. Oracle is running out of time for its experts to prepare their economic and financial analyses based on admissible business records. Even if Google meets its unspecified commitment to produce something by "early November," Oracle does not have enough time to evaluate that information and prepare its reports by December 8.

Oracle thus requests as follows: (1) that the Court order production by Google to Oracle by noon, Thursday, November 5, 2015, of a list of all periodic reports prepared by Google containing mobile and non-mobile financial information (including the financial information of any organization subsequently spun out as a subsidiary of Alphabet) since January 1, 2011 and identification of the highest ranking person to whom such reports were circulated (*see* ECF No. 349); (2) that Oracle designate by noon, Friday, November 6, 2015 which types of reports it wishes produced; and (3) that Google produce such reports for the period from January 1, 2011 through the present by close of business on Monday, November 9, 2015.

Oracle further requests that the Court enter the table of dates set forth in the stipulation previously filed by the parties (ECF No. 1334) to adjust the deadlines for completion of fact discovery and disclosure of expert reports. Although this may be insufficient additional time in light of Google's foot-dragging in discovery, the parties have agreed to these dates. The stipulated proposed deadlines will extend the service of initial expert reports by approximately one month. The dates agreed upon by the parties in the Stipulation are consistent with the Court's announced tentative trial date.

Respectfully submitted,

Annette L. Hurst
Counsel for Oracle America, Inc.